IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2488 OF 2004

Mr. S. Nagamanickkam and
Others ... Petitioners

V/s

M/s Shalibhadra Traders &
Others ... Respondents

M/s Khaitan & Jaykar for petitioners
Mr. N.V. Pradhan for respondent No.1.

Coram : V.M. Kanade, J,
Dated : 27/04/2005.

P.C. :-

1 The petitioners are challenging the order of issuance of process by the Additional Chief Metropolitan Magistrate, 30th Court, Kurla, Mumbai in case No. 489/S/2003, 1700/S/2003, 1701/S/2003 and 1702/S/2003.

2 It is submitted by the learned counsel appearing on behalf of the petitioners that the petitioners No.2 and 3 were not the Directors of the company. It is submitted that entire payment was made to the complainant. However, the cheques which were given to them were misused by the respondent No.1. The cheques were deposited in the bank after the entire payment was made. It is submitted that thirteen cheques were not returned to the petitioners after the entire payment was made. Therefore, the complaint is liable to be dismissed. It is further submitted that there

is no averment in the complaint that the accused were the incharge and responsible for the day to day affairs of the company.

3 Mr. Pradhan, the learned counsel appearing on behalf of the respondent No.1 on instructions submits that the complainant was not aware that the petitioners No.2 and 3 were the Non-Executive Directors of the company. He submits that the petitioners No.2 and 3 will be deleted from the complaint. He submits that the submission made by the learned counsel for the petitioners is in correct. He has wrongly disputed the fact regarding the payment of dues to the complainant.

4 In my view, the submission made by the learned counsel for the petitioners cannot be accepted as this fact will have to be established by the trial court. Criminal writ petition is partly allowed. The process issued against the petitioners No.2 and 3 in criminal case No. 489/S/2003, 1700/S/2003 and 1701/S/2003 is quashed and set aside. However, the trial court may proceed with trial so far as petitioner No.1 is concerned. The trial court is directed to decide the case as expeditiously as possible against the petitioner No.1 and other accused in the complaint, in any case within a period of 8 months.

(V.M. Kanade, J.)